IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9/8/2004

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The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. SARDAR ZACKRIA HUSSAIN

H.C.P.No.308 of 2004

and H.C.M.P.No. 52 of 2004.

C. Amalorpavam,
W/o. Maria Selvam.

.. Petitioner.

-Vs-

1. The State of Tamil Nadu,
represented by The Secretary to the
Government, Public (SC) Department,
Fort St. George, Chennai.

2. The Union of India,
represented by its Secretary to the
Government, Ministry of Finance,
Department of Revenue, New Delhi.

3. The Superintendent of Central Prison,
Central Prison, Chennai.

.. Respondents.
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Habeas Corpus Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, calling for the records relating to the impugned detention order in G.O.No. SR.1 /1550-6/2003 dated 10-12-2003 passed by the first respondent, quash the same and consequently directing the respondents to produce the body of the person of the detenu P. Mariaselvam, son of late Pappu now detained in Central Prison, Chennai before this Court and set him at liberty forthwith.

!For petitioner: Mr. B. Kumar, senior counsel

for Mr. A. Ganesh.

^For respondents: Mr. Abudu Kumar Rajarathinam,
Govt., Advocate for R1 and R3.

Mrs. Vanathi Srinivasan, Addl.
Central Govt.,Standing counsel
for R2.

:ORDER

(Order of the Court was delivered by P. Sathasivam, J.,)

Wife of the detenu challenges the order of detention dated 10-12-2003 detaining her husband P. Mariaselvam under Section 3 (1) (ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974)(hereinafter referred to as "COFEPOSA" Act). The said order of detention came to be passed with a view to preventing him from abetting the smuggling of goods in future.

2. It is seen that based on specific intelligent report, the officers of Directorate of Revenue Intelligence (D.R.I), Chennai while watching the passengers near the aerobridge of Flight A1.473, intercepted the detenu P. Mariaselvam, employed as Assistant Officer, Security, Air India, Chennai, and a search was conducted in the presence of independent witnesses. During the said search, he was found wearing a specially stitched khakhi cloth belt with two pouches on his waist underneath his uniform trousers. On examination by the Directorate of Revenue Intelligence, each of the two pouches of the belt were found to contain a packet wrapped with paper and covered with adhesive tape. On enquiry, the detenu informed the D.R.I. officers that in pursuance of a prior arrangement, he had removed the said packets from the dust bin under the wash basin of the front toilet of the Air India flight A1-473 and secreted the same in the said pouches. In the enquiry the detenu informed that a passenger who had travelled by the said flight from Singapore to Chennai had concealed the said packets in the said place during his journey and his job was to recover and hand over the same outside the airport to the said passenger. The said passenger's name is Murugan. The entire plan was already discussed between the said Murugan and the detenu in advance. The said two packets were found to contain in all 150 numbers of Intel Pentium 4 Computer Processors 2.4 Gzh (Tray CPU). A seizure mahazar was drawn on the spot in the presence of independent witnesses. On further enquiry, the detenu revealed that the person who arranged the transport of computer chips was one Murugan. It is also stated in the grounds of detention that as per the instruction of the said Murugan, the detenu had successfully retrieved around 10 of such consignments concealed in the aircraft and handed over the same and received consideration for his work. Any goods brought into India contrary to the legal provisions of Customs Act, 1962 are liable to confiscation under Section 111 (d) of the Customs Act, 1962 and the persons concerned therein are liable for penal action under section 112 and punishment under section 135 of the Customs Act, 1962. The act of the detenu amounts to smuggling as per

Section 2 (39) of the Customs Act. In the instant case, 150 numbers of Pentium 4 Computer Processors were brought into India by concealment in the aircraft of flight A1-473/26.11.2003 which were on prior arrangement between Murugan and the detenu. Thus, the seized Intel Pentium Processors not constituting a bona fide baggage have been brought into India in contravention of the provisions of Section 11 of the Customs Act, thereby they are liable to confiscation under Section 111(d) of the Customs Act, 1962. Hence, the detention order was passed against the detenu with a view to preventing him from abetting the smuggling of goods in future.

3. Mr. B. Kumar, learned senior counsel for the petitioner, would contend that the main person alleged to have involved in the act of smuggling is one Murugan alias Karthik and when he went to Singapore, he purchased Computer parts, brought them in the plan while coming to India and kept the same in the front toilet of the aircraft. He also contended that the role attributed to the detenu is that on being informed by Murugan, he took the same and kept it with him and at that time, he was apprehended. According to him, when the main person, namely, Murugan has been released based on the orders of the Advisory Board, the detenu who is said to be an abetttor, cannot be continued to be in prison and it amounts to punishment, therefore, the detenu's continued detention is illegal. On the other hand, Mr. Abudukumar Rajarathinam, learned Government Advocate, after taking us through the grounds of detention, and the role played by the detenu, who is none-else than the Assistant Officer, Security, Air India, would contend that he had successfully retrieved 10 such consignments concealed in the Aircrafts, thus violated Section 3 (1) (ii) of the COFEPOSA Act, hence in order to prevent him from abetting the smuggling of goods in future, the impugned detention order was passed and there is no merit in this petition.

4. In order to appreciate the above contentions, it is useful to refer the relevant provisions of the Customs act, 1962 and COFEPOSA Act. Section 1 (39) of the Customs Act, 1962 defines " smuggling":

"Section 1 (39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

Section 111 of the Act refers to confiscation of improperly imported goods while Section 113 relates to confiscation of goods attempted to be improperly exported. Section 3(i) of the COFEPOSA Act empowers the Central Government or State Government or any officer of the State Government may if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from-
(i) smuggling goods, or
(ii) abetting the smuggling of goods, or
(iii) engaging in transporting or concealing or keeping smuggled goods, or
(iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or

(v) harbouring persons engaged in smuggling goods
or in abetting the smuggling of goods
it is necessary so to do, making an order directing that person be detained.

5. With the above statutory provisions let us consider the claim of both sides. It is true that the detention of V. Murugan who is alleged to have smuggled the contraband and detained under Section 3 (1)(i) of the COFEPOSA Act has been revoked by the Government in G.O.Ms.No. 289-Public (Law and Order) Department dated 26-3-2004 on the basis of the report of the State Advisory Board (COFEPOSA). Learned senior counsel for the petitioner would contend that in the light of the fact that the main person who is alleged to have involved has been released, the detenu herein, who is in the position of abettor, cannot be continued in prison. In support of his claim, he very much relied on decisions of the Apex Court in (i) Faguna Kanta v. State of Assam (AIR 1959 Supreme Court 673); (ii) Haradhan Chakrabarty v. Union of India (AIR 1990 Supreme Court 1210); and (iii) a judgement of the Allahabad High Court in Wazir Yadav v. State of U.P (1993 Cri.L.J. 1220). Admittedly, the first two cases dealt with by the Supreme Court relate to various offences under the Indian Penal Code and not either under Customs Act or under COFEPOSA Act. It is further seen that in those cases since the principal offender was acquitted after a full-fledged trial, the Court has concluded that after acquittal of the principal offender, the abettor cannot be convicted. As said earlier, the present case is not at the trial stage and we are concerned to decide the issue whether the detenu has involved in the smuggling of goods; and whether the State Government is justified in detaining him under COFEPOSA Act with a view to preventing him from abetting the smuggling of goods in future. In such a circumstance, we are of the considered view that both the decisions of the Hon'ble Supreme Court are not helpful to the case of the petitioner herein. No doubt, the observation of the Allahabad High Court in the above referred decision (1993 Crl.L.J.1220) is that if more than one detenu involved and the grounds of detention are identical and similar in nature and if one detenu is released by the State Government based on the opinion of the Advisory Board, the continued detention of other co-detenu is not sound and violative of Article 14 of the Constitution. In the case on hand, first of all, except the order of revocation in respect of the detention of V. Murugan, neither the reasoning of the Government nor the decision of the State Advisory Board (COFEPOSA) was placed before us. In other words, we are not placed with the grounds of detention of V. Murugan, and the decision of the Advisory Board. In fact, the very same State Advisory Board has confirmed the detention of the detenu herein. In such a circumstance, merely because the Government revoked the detention of V. Murugan based on the opinion of the State Advisory Board, it cannot be presumed that it is automatic that when a co-detenu is released, the other detenu is also to be released.. In the light of the above reasons, with respect, we are unable to share the view expressed by the Allahabad High Court and it cannot be held that continuance of detention of other co-detenu is violative of Article 14 of the Constitution. Further, the case dealt with by the Allahabad High Court pertains to an order of preventive detention passed under National Security Act and not under COFEPOSA as in the present case. Accordingly, we reject the contention raised by the learned senior counsel for the petitioner.

6. Mr. B. Kumar, learned senior counsel for the petitioner by drawing our attention to the decision of this Court in Kutbudeen Ali Bhoy v. State, reported in 1990 Law Weekly (Criminal) 169, would contend that the detaining authority failed to consider and not applied its mind to the statutory provisions and to the facts of the case properly resulting in total mis-direction in arriving at subjective satisfaction. In the said decision, the Division Bench, after referring to five sub-clauses in Section 3 (1) of the COFEPOSA Act, held that transporting of smuggled goods and disposing the same may amount to activities connected with smuggling, they cannot be treated as acts of smuggling as per the provisions contained in Section 3 (1) of the COFEPOSA Act. To arrive such conclusion, they relied on decisions of the Calcutta High Court in Sukat Ali Biswas v. State of West Bengal and others, reported in 1976 (i) Crl.L.J.28 as well as Karnataka High Court in Deelip V. Telisra v. Government of India by Joint Secretary, Ministry of Finance, Department of Revenue, New Delhi and another (W.P.No.8 of 1989 Order dated 26-6-1989). We have already referred to the provision of Section 3 (1) as well as five
sub-clauses therein. Merely because the other detenu-Murugan brought the Intel Pentium 4 Computer Processors and kept them in front toilet of the aircraft, it cannot be construed that the act of smuggling was complete. In the grounds of detention, the detaining authority has elaborately referred to the voluntary confessional statement of the detenu as well as the other person, namely, Murugan wherein they admitted how they planed to bring the materials to India to evade customs duty and the part played by each one of them. It is also relevant to note that the detenu herein was detained under Section 3 (1) (ii) of the COFEPOSA Act, namely, "abetting the smuggling of goods". Merely because the other detenu, namely, Murugan had brought the contraband and concealed the same in the toilet of the aircraft, the smuggling of goods as referred to in sub-clause (i) of the Act cannot come to an end. Likewise, on reaching the destination, somebody i.e., other than the person who brought the goods, deal with the contraband to avoid confiscation either under section 111 or under Section 113 of the Customs Act, undoubtedly, the authority empowered to make orders detaining him in prison with a view to

preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a
view to preventing him from smuggling goods, or abetting the smuggling of goods. The detenu in the case on hand is not an ordinary person, but an Assistant Officer, Security, Air India. It is also relevant to note that the detenu had successfully retrieved concealed goods from the aircrafts around 10 occasions an he fell into pray only in the night of 24-9-2003. The detaining authority has also satisfied that the seized 150 numbers of Intel Pentium 4 computer processors not constituting a bona fide baggage have been brought into India in contravention of the provisions of Section 11 of the Customs Act thereby liable for confiscation for having been smuggled in India. We also satisfied that the respondents complied with all the other formalities and afforded adequate opportunities to the detenu to putforth his case. We are satisfied that after considering his voluntary statement and all other materials, and also taking note of the fact that the detenu being a responsible officer of the Air India, Chennai International Airport and with a view to preventing him from abetting the smuggling of goods in future passed

the impugned order of
detention. There is no ground for interference. Accordingly, the petition
fails and the same is dismissed. H.C.M.P.No. 52 of 2004 is also dismissed.

R.B.
Index : Yes.
Internet: Yes.
To:
1. The Secretary to the
Government, Public (SC) Department,
Fort St. George, Chennai.

2. The Union of India,
represented by its Secretary to the
Government, Ministry of Finance,
Department of Revenue, New Delhi.

3. The Superintendent of Central Prison,
Central Prison, Chennai.

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